

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

ROBERT A. ZDROIK,

Plaintiff,

Case No. 2:18-cv-244

v.

MARLA REIMANN, TINA HOSE, BONNIE CRABTREE,
DR. DANIEL HEKMAN, SHAUNE HOBAN,
DR. PRAPTI KUBER, DR. FARHAT KHAN AND
DR. RICHARD FULLER

Defendants.

COMPLAINT

Plaintiff Robert A. Zdroik, by his attorneys, Strang Bradley, LLC, for his complaint against Defendants Marla Reimann, Tina Hose, Bonnie Crabtree, Dr. Daniel Hekman, Shaune Hoban, Dr. Prapti Kuber, and Dr. Richard Fuller, state as follows:

Introduction

1. This is a lawsuit brought pursuant to 42 U.S.C. § 1983 to redress the deprivation under color of law of Robert Zdroik's constitutional right to be free from deliberate indifference to a serious medical need in violation of the Eighth Amendment of the United States Constitution.

2. On July 11, 2017, Zdroik suffered an acute ischemic stroke while in custody at Dodge Correctional Institution after repeated requests for medical attention related to complications from his prior open-heart surgery.

3. Plaintiff seeks actual or compensatory damages against Defendants, and because they acted recklessly and/or with callous indifference to the federally protected rights of Plaintiff, punitive damages, plus the costs of this action, attorneys' fees, and such other and further relief that the Court deems just and equitable.

Jurisdiction and Venue

4. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction), and § 1343(a)(3) (42 U.S.C. §1983 jurisdiction).

5. Venue is proper under 28 U.S.C. § 1391(b)(2). A substantial part of the events or omissions giving rise to the claims asserted herein occurred within this judicial district.

Parties

6. Plaintiff Robert A. Zdroik is an adult who resides in Merrill, Wisconsin. At all relevant times, he was an inmate in the Lincoln County Jail, Vilas County Jail and Dodge Correctional Institution.

7. Defendant Marla Reimann and Tina Hose are medical professionals working at the Lincoln County Jail in Merrill, Wisconsin and are responsible for the medical treatment and care of inmates at the Lincoln County Jail. At all times relevant to this action they were acting under color of law and within the scope of their employment and are sued in their individual capacities.

8. Bonnie Crabtree and Dr. Daniel Hekman are medical professionals working at the Vilas County Jail in Eagle River, Wisconsin and are responsible for the medical treatment and care of inmates at the Vilas County Jail. At all times relevant to

this action they were acting under color of law and within the scope of their employment and are sued in their individual capacities.

9. Shaune Hoban, Dr. Prapti Kuber, Dr. Farhat Khan and Dr. Richard Fuller are medical professionals working at the Dodge Correctional Institution in Waupun, Wisconsin and are responsible for the medical treatment and care of inmates at the Dodge Correctional Institution. At all times relevant to this action they were acting under color of law and within the scope of their employment and are sued in their individual capacities.

Facts

10. On June 12, 2015, Zdroik received a sentence of 200 days jail in Lincoln County Case Number 2015CF000036.

11. On September 16, 2015, Zdroik received a sentence of two years confinement in a Wisconsin State Prison imposed and stayed for three years of probation and one year of jail as a condition of probation in Vilas County Case Number 2015CF000067. Probation was subsequently revoked on June 12, 2017, and Zdroik's original sentence of two years confinement in a Wisconsin State Prison became effective.

12. On October 6, 2016, Zdroik had open-heart surgery at St. Joseph's Marshfield Clinic in Marshfield, Wisconsin to repair his mitral valve. At all relevant times that Zdroik was in this care, all Defendants knew that Zdroik recently had open-heart surgery to repair his mitral valve.

13. Between April 24, 2017 and June 14, 2017, Zdroik was an inmate at Lincoln County Jail.

14. On May 22, 2017, Zdroik submitted a written medical request to Lincoln County Jail Nurse Marla Reimann stating “my hands + feet and arms legs face have been going numb a lot lately. I need to see a Dr. outside of this jail my chest by my incision is numb and really sore. I want to see Marla to make me Appt to cardiologist.” [verbatim]. Nurse Reimann responded informing Zdroik that a cardiology appointment has been made for him in June.

15. On May 27, 2017, Zdroik submitted a written medical request to Tina Hose stating “Something is wrong with me I’ve been going numb. I need to see a Dr. my face my hands legs knees hands chest. I drink a lot of water. This is from my heart surgery” [verbatim]. Tina Hose noted in response that Zdroik was concerned about the date of his cardiac follow up appointment, just as he was last week, and that his cardiac follow up appointment has already been scheduled.

16. On June 2, 2017, Zdroik suffered a mini-stroke while in the Lincoln County Jail, fell to the ground and was unable to feel or control his legs. At least two inmates pushed the red emergency buttons to report the emergency to correctional officers, but their requests for emergency responses were ignored. After no one responded to the inmates emergency calls one inmate picked Zdroik up and dragged him to the front gate to alert staff of the medical emergency.

17. In response to Zdroik’s June 2, 2017 medical incident, Tina Hose informed Zdroik that he had a pending cardiac follow up appointment scheduled and assured him that if a medical emergency occurred Zdroik would receive emergency medical treatment.

18. On June 6, 2017, Zdroik arrived at Aspirus Wausau Hospital in custody, shackled and with Lincoln County Sheriff's Deputies for an electrocardiogram and other medical test related to his heart condition.

19. On June 6, 2017, Zdroik was discharge with written instructions that were given to the Lincoln County Sheriff's Deputies to give to the Lincoln County Jail Nurse Marla Reimann stating that Dr. Luce had ordered Zdroik have a follow-up transesophageal echocardiogram ("TEE") test at Aspirus Wausau Hospital on June 30, 2017 at 8:00 a.m.

20. On June 6, 2017, Lincoln County Jail received written notice of Zdroik's TEE test scheduled with Dr. Luce on June 30, 2017 at 8:00 a.m. and included it in his jail medical file.

21. On June 11, 2017, Zdroik submitted a written medical request to Tina Hose stating "My surgeon at Aspirus took Blood did you get my test results Back yet. To see why I been going numb in my legs arms hands chest legs knees my face to time to time Is it my nerves in my chest growing back Joshua L Luce MD Cardiology. Am I gonna be here the end of June to go to my Appt" [verbatim]. Tina Hose noted that Zdroik's transfer date to Dodge Correctional Institution was pending and that she called the Aspirus lab to check on the status of the results.

22. On June 12, 2017, Zdroik submitted a written medical request to Lincoln County Jail Nurse Marla Reimann. Nurse Reimann noted that Zdroik was concerned about the numbness/tingling of his extremities due to an unknown cause and that Zdroik was scheduled for a TEE test on June 30, 2017.

23. On June 13, 2017, Lincoln County Jail Nurse Marla Reimann called Dr. Luce's office to check on any follow up related to Zdroik's June 6, 2017, doctor's visit. Dr. Luce's office informed Marla that Zdroik had a TEE test scheduled for June 30, 2017 at 8:00 a.m.

24. On June 14, 2017, Zdroik was transferred from Lincoln County Jail to Vilas County Jail.

25. Lincoln County Jail Defendants knew that Zdroik was being transferred to Vilas County Jail on a temporary basis and that his final destination was Dodge Correctional Institution. Additionally, Lincoln County Jail Defendants knew that once at Dodge Correctional Institution, that Zdroik would not be brought to Dr. Luce's office Aspirus Wausau Hospital for his TEE test scheduled on June 30, 2017 at 8:00 a.m.

26. Between June 14, 2017 and June 27, 2017, Zdroik was an inmate at Vilas County Jail.

27. On June 14, 2017, the same day Zdroik was transferred from Lincoln County Jail to Vilas County Jail, Lincoln County Jail Nurse Marla Reimann sent a Health Transfer Summary to Vilas County Jail along with a copy of Zdroik's medical records. The coversheet of the Health Transfer Summary specifically noted under Future Health Care Appointments "6/30/17 - TE (see paperwork)" and "Hx mitral prolapse and replacement Oct 2016."

28. On June 18, 2017, Zdroik submitted a written medical request to Vilas County Jail Nurse Bonnie Crabtree stating "Lincoln Co Jail made me a Dr. Appt. I fell out in the Jail on June 2nd and I went to my Cardiologist on June 5th Monday they took

Blood from me 3 tubes I signed a release from the day before I came here to see whats going on Joshua L. Luce from Aspirus is my Cardiologist he thinks I have nerve damage so he also set up a TEE test to check me out the Jail in Lincoln Co set it up it takes 3 weeks to get an Appt its June 30th at 7:00 in Wausau at the Heart + Vasular. I really need to Keep this Appt I been going numb in my legs Arms chest face.”
[verbatim].

29. On June 19, 2017, Jamie Meier from the Vilas County Sheriff’s Department sent an email to Vilas County Jail Nurse Bonnie Crabtree, informing her that Zdroik was going to be transported to Dodge Correctional on June 27, 2017.

30. On June 19, 2017, Zdroik saw Vilas County Jail Nurse Bonnie Crabtree. Her notes indicate Zdroik told her “I just had open heart surgery” and “Also, my chest hurts where they did the surgery.” She also noted that Zdroik had a TEE test schedule at the end of this month. On a separate Medical History form she noted that Zdroik was currently under M.D. care for a heart follow up. Nurse Crabtree called Dr. Hekman and informed him of Zdroik’s above reports.

31. Vilas County Jail Nurse Bonnie Crabtree and Dr. Daniel Hekman knew that once Zdroik was transferred to Dodge Correctional Institution, he would not be brought to Dr. Luce’s office at Aspirus Wausau Hospital for his TEE test scheduled on June 30, 2017 at 8:00 a.m. Despite knowing this 11 days before Zdroik would miss his TEE test, Defendants did nothing to ensure Zdroik would get a TEE test as ordered by outside specialist Dr. Luce.

32. On June 26, 2017, Zdroik submitted a written medical request to Vilas County Jail Nurse Bonnie Crabtree stating "I also want to no am I going to my cardiologist appt. ... I need to go to my Appt to see why my legs chest + knees and arm go numb time to time. My Cardiologist thinks if my nerves are growing back together that why I need to get these test done on me." [verbatim].

33. On June 26, 2017, the day before Zdroik was scheduled to be transferred from Vilas County Jail to Dodge Correctional Institution. Vilas County Jail Nurse Bonnie Crabtree filled out a Health Transfer Summary to be sent to Dodge Correctional Institution along with a copy of Zdroik's medical records. The Health Transfer Summary coversheet specifically noted under Future Health Care Appointments "6/30/17 - TEE (see paperwork)" and "hearts valve repair in Oct/2016."

34. On June 27, 2017, Zdroik was transferred from Vilas County Jail to Dodge Correctional Institution.

35. Between June 27, 2017 and August 30, 2017, Zdroik was an inmate at Dodge Correctional Institution. Dodge Correctional Institution Defendants received a copy of Zdroik's medical file from Vilas County Jail, including the June 6, 2017, letter from Apirus Wausau Hospital stating that Zdroik had a TEE test scheduled with Dr. Luce on June 30, 2017 at 8:00 a.m.

36. On June 27, 2017, at approximately 11:10 a.m., Zdroik had an intake screening with Dodge Correctional Institution Nurse Shaune Hoban in which she noted that Zdroik recently had open-heart surgery at Marshfield, Wisconsin, that he had been experiencing numbness in his arms and legs, but that no doctor appointment or nurse

appointment follow up was necessary. The nurse noted that Zdroik had a follow up appointment scheduled on June 30, 2017 at 8:00 a.m. with Dr. Luce at Aspirus Cardiology for a TEE test. These medical notes were reviewed and signed by Dr. Prapti Kuber.

37. On June 27, 2017, at approximately 2:30 p.m., Dr. Prapti Kuber from the Dodge Correctional Institution called Dr. Luce's office at Aspirus Wausau Hospital to cancel Zdroik's TEE test that had been scheduled for June 30, 2017, informing Dr. Luce's office that Zdroik had been transferred to Dodge Correctional Institution and that Zdroik will have the TEE test done at a facility close to Dodge Correctional Institution.

38. On June 28, 2017, Zdroik saw a Dr. Prapti Kuber at the Dodge Correctional Institution. Dr. Kuber noted in his medical file that Zdroik complained of chest pain and dizziness.

39. On July 2, 2017, Zdroik reported to Dodge Correctional Institution Nurse Monica L. Gagnon that his hands had been numb for approximately one week and that he was not feeling well. Nurse Gagnon made a record of this in Zdroik's medical file.

40. On July 3, 2017, Dr. Prapti Kuber at the Dodge Correctional Institution wrote a note in Zdroik's medical file that Zdroik's cardiology appointment at Aspirus Hospital was cancelled and that a cardiology appointment should be scheduled at UW Hospital in 1-2 months.

41. On July 4, 2017, Zdroik wrote to Dr. Prapti Kuber at the Dodge Correctional Institution requesting healthcare services, specifically Zdroik stated "Dr.

Kuber I was wondering if you made me my cardiologist Appt yet and im in pain that mapap isn't working at night I cant sleep but two-three hours at a time Im having numb feelings in my chest arms and legs I need to see someone for this please. Thank you." [verbatim]. On July 7, 2017 Dr. Kuber wrote a note in Zdroik's medical file in response to his above healthcare request: "You can address all issues at your physical, which you have not done yet. Until then - we do not start treatment plans."

42. On July 10, 2017, Zdroik had an intake medical exam by Dr. Richard Fuller at Dodge Correctional Institution where he informed the doctor that he has had chest pain and intermittent numbness in his legs and arms. He informed the doctor that he had been scheduled for a TEE test on June 30, 2017 in Wausau, Wisconsin, but that that he was transferred to Dodge Correctional on June 27, 2017. Zdroik asked Dr. Fuller when he would have his TEE test done. After informing the doctor about his chest pain, numbness and missed TEE test, and inquiring when he can have his TEE test done, the doctor responded in Zdroik's medical file that "He will be scheduled to see a cardiologist at UW Health in the next 1-2 months."

43. The following day, on July 11, 2017, at approximately 5:45 p.m., Zdroik suffered an acute ischemic stroke at Dodge Correctional Institution. Dodge Correctional Institution Nurse Barry Rudack reported receiving a call from one of the correctional officers that Zdroik cannot move the left side of his body and has left side facial droop.

44. At the time Zdroik suffered his stroke, none the Dodge Correctional Institution Defendant's nor any other Dodge Correctional Institution medical staff had even scheduled any TEE test let alone any outside cardiology appointment for Zdroik.

45. On July 11, 2017, at approximately 6:05 p.m., Zdroik was transported to Waupun Memorial Hospital, and then by helicopter Med Flight to UW Hospital in Madison, Wisconsin.

46. Upon arrival at the UW Hospital Zdroik was examined and Dr. Sattin noted that Zdroik presented with upgoing plantar reflex on his left side, with left sensory neglect and facial droop. A TEE test was performed and showed a partially thrombosed left atrial appendage remnant with active thrombosis. Dr. Sattin noted this was the cause of the stroke. Review of the brain CT scan showed a loss of gray white matter differentiation in the right temporal lobe.

47. On July 13, 2017, Zdroik was discharged from UW Hospital. Dr. Justin Sattin instructions addressed to Dr. Farhat Khan at Dodge Correctional Institution that Zdroik would need to be seen at the stroke clinic for a follow up appointment in 1-2 weeks after discharge.

48. Despite those orders from an outside specialist as well as Zdroik sending a written request asking to go to his scheduled follow up appointment at UW Hospital, Dr. Farhat Khan, Dodge Correctional Institution Defendants and medical staff failed to schedule any follow up appointment for Zdroik as ordered by outside stroke specialist Dr. Sattin.

49. On July 14, 2017, 18 days after Zdroik arrived at Dodge Correctional Institution and three days after Zdroik suffered an acute ischemic stroke, a request for medical records was sent by Dodge Correctional Institution to Marshfield Hospital, requesting copies of Zdroik's medical records related to his open-heart surgery.

50. Lincoln County Jail and Vilas County Jail Defendants, knew or reasonably should have known that Zdroik's transfer to Dodge Correctional Institution would prevent him from making his June 30, 2017 TEE test and that given his symptoms, failing to take steps necessary to ensure that Zdroik would be able to get a TEE test done on or before the June 30, 2017 TEE test date, created an unreasonably and substantial risk of danger to Zdroik.

51. Defendants knew or reasonably should have known that repeated episodes of numbness or tingling in the extremities, as well as dizziness and loss of consciousness can be signs of a transient ischemic attacks or mini-strokes and that such mini-strokes indicate an increased risk of a full-blown stroke. Additionally, Defendants knew that Zdroik was at increased risk for a stroke given his recent open-heart surgery, documented symptoms and outside specialists order for a TEE test.

52. Defendants knew that a TEE test is a test that produces detailed pictures of your heart and the arteries that lead to and from it using high-frequency sound waves (ultrasound). That TEE tests are used to check if there is abnormal tissue around heart valves that could indicate bacterial, viral or fungal infections, if blood is leaking backward through heart valves (regurgitation) or if valves are narrowed or blocked

(stenosis), or if there are blood clots in the heart or the arteries, which can cause a stroke.

53. Defendants' unnecessary delay in and failure to provide Zdroik with adequate medical care to address his repeated request for cardiology testing and complaints of numbness in his extremities after open-heart surgery, including the failure to provide Zdroik with a TEE test as ordered by Dr. Luce of Aspirus Wausau Hospital, resulted in Zdroik suffering an acute ischemic stroke, which caused Zdroik permanent neurological damage to his brain.

54. Had the Defendant's complied with the June 30, 2017 TEE test as ordered by Dr. Luce of Aspirus Wausau Hospital, the test would have revealed the partially thrombosed left atrial appendage remnant with active thrombosis and immediate intervention could have prevented Zdroik from suffering an acute ischemic stroke.

55. Within 30 days prior to suffering a stroke, Zdroik's prison and jail medical records demonstrate that he complained about numbness in his arms and legs eight separate times, and that he also specifically inquired about getting a TEE test eight separate times.

56. Defendants knew or reasonably should have known that their failure to conduct heart tests or allow Zdroik to seek outside cardiology testing after Zdroik's repeated complaints of numbness in his extremities following open-heart surgery, and his repeated requests for cardiology testing, coupled with their knowledge that Zdroik was being actively treated by a heart specialist who order that he undergo a TEE test on June 30, 2017, created an unreasonably and substantial risk of danger to Zdroik.

57. Plaintiff did not receive adequate medical care while at Lincoln County Jail, Vilas County Jail and Dodge Correctional Institution, such as timely follow up visits ordered by outside medical specialists and medical treatment.

58. As a result of Dr. Farhat Khan and Dodge Correctional Institution Defendants' and medical staff's failure to schedule any follow up appointment for Zdroik as ordered by outside stroke specialist Dr. Sattin, Zdroik continued to suffer chest pain, dizziness, nausea, weakness, emotional distress and fear that he may have another stroke.

59. As a result of Defendants' misconduct, Plaintiff suffered a series of mini-strokes, an acute ischemic stroke, pain, dizziness, nausea, weakness, emotional distress and fear that his untreated serious medical condition may result in his death.

60. Plaintiff has suffered and continues to suffer, extreme distress, fear, humiliation, sadness, anger, loss of ability to work and mental deficits as a result of Defendants' actions.

COUNT I
42 U.S.C. § 1983 Claim for Deliberate Indifference -
Denial and Delay of Medical Care
(All Defendants)

61. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

62. As described more fully above, Defendants had notice of Plaintiff's medical needs and the seriousness of his medical needs, and knew the unreasonable risk of harm to Plaintiff if he did not receive appropriate and timely medical care. Despite that knowledge, Defendants failed to provide proper and timely medical care

or access to medical care to treat Plaintiff's serious health problem, and failed to honor the orders of an outside medical specialist in violation of Plaintiff's constitutional right to be free from deliberate indifference to a serious medical need under the Eighth Amendment of the United States Constitution.

63. Defendants acted recklessly and/or with callous indifference to the federally protected rights of Plaintiff.

64. As a direct and proximate result of these Defendants' unlawful action, Plaintiff has suffered, and will continue to suffer damages.

COUNT II
42 U.S.C. § 1983 Claim for Failure to Intervene
(All Defendants)

65. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

66. As described more fully above, Defendants had the opportunity, duty and ability to intervene on behalf of Plaintiffs during Defendants pattern and practice of violating Plaintiffs' constitutional rights in one or more of the ways described above, but failed to do so.

67. Defendants acted recklessly and/or with callous indifference to the federally protected rights of Plaintiff.

68. As a direct and proximate result of these Defendants' unlawful action, Plaintiff has suffered, and will continue to suffer damages.

COUNT III
State Law Claim for Indemnification

69. Plaintiffs reallege and incorporate by reference all of the allegations in all of the preceding paragraphs.

70. Wisconsin law, WIS. STAT. § 895.46, requires public entities to pay any tort judgment for damages which employees are liable for acts within the scope of their employment.

71. At all times relevant to this action, Defendants committed the acts alleged above in the scope of their employment with Lincoln County, Vilas County or the State of Wisconsin.

WHEREFORE, Plaintiff demands actual or compensatory damages against Defendants, and because they acted maliciously, wantonly, or oppressively, punitive damages, plus the costs of this action, attorneys' fees, and such other and further relief that the Court deems just and equitable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury on behalf of themselves and the class members, pursuant to Fed. R. Civ. P. 38(b), on all issues so triable.

Respectfully submitted,

Dated: February 19, 2018

/s/ John H. Bradley
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